



**Sunshine Reform Task Force – Closed Session Provisions  
 Comparison of the City of Milpitas Provisions with  
 the Brown Act, San Jose Practice and Other Local “Sunshine” Ordinances  
 Draft - 9/29/2006**

<b>City of Milpitas – Closed Session Provisions</b>	<b>The Brown Act, San Jose Practice and Other Local “Sunshine” Ordinances – Closed Session Provisions</b>
<p>(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:</p> <p><b>CONFERENCE WITH REAL PROPERTY NEGOTIATOR</b></p> <p><b>Property:</b></p> <p><b>Person(s) negotiating:</b></p> <p><b>Under negotiation:</b>            Price: ____ Terms of payment: ____ Both:</p> <p>The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.</p>	<p>This form is suggested by the Brown Act. (Government Code Section 54954.5(b).) San Jose routinely uses this format.</p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8.)</p> <p>Oakland and Benicia make the permissive provisions of Gov't Code Section 54954.5 mandatory. (Oakland Sunshine Ordinance Section 2.20.100; Benicia Sunshine Ordinance Section 4.08.120(B).)</p>
<p>(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:</p> <p><b>CONFERENCE WITH LEGAL COUNSEL</b></p>	<p>This form is suggested by the Brown Act except that Milpitas's ordinance requires that the policy body be identified "As defendant" or "As plaintiff" in Anticipated Litigation. (Government Code Section 54954.5(c).) San Jose routinely uses the format set out in the Brown Act.</p> <p>San Francisco's ordinance is virtually the same as Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8.)</p>

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<p><b>Existing Litigation:</b></p> <p>_____ Unspecified to protect service of process            _____ Unspecified to protect settlement posture</p> <p><b>or:</b></p> <p><b>Anticipated Litigation:</b></p> <p>_____ As defendant            _____ As plaintiff</p> <p>The space under "Existing Litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or</p>	<p>Oakland and Benicia make the permissive provisions of Gov't Code Section 54954.5 mandatory. (Oakland Sunshine Ordinance Section 2.20.100; Benicia Sunshine Ordinance Section 4.08.120(B).)</p>

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both as appropriate.	
<p>(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:</p> <p><b>THREAT TO PUBLIC SERVICES OR FACILITIES</b></p> <p>Name, title and agency of law enforcement officer(s) to be conferred with:</p> <p>or:</p> <p><b>PUBLIC EMPLOYEE APPOINTMENT/HIRING</b></p> <p>Title/description of position(s) to be filled:</p> <p><b>PUBLIC EMPLOYEE PERFORMANCE EVALUATION</b></p> <p>Position and, in the case of a routine evaluation, name of employee(s) being evaluated:</p> <p>or:</p> <p><b>PUBLIC EMPLOYEE DISMISSAL</b></p> <p>Number of employees affected:</p>	<p>This form is suggested by the Brown Act except that Milpitas's ordinance (1) requires disclosure of the name of the employee being evaluated in the case of a routine evaluation; (2) does not permit employee discipline to be discussed in closed session; and (3) requires listing of the number of employees affected in the case of employee dismissal. (Government Code Section 54954.5(e).) <b>San Jose routinely uses the format set out in the Brown Act.</b></p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8.)</p> <p>Oakland and Benicia make the permissive provisions of Gov't Code Section 54954.5 mandatory. (Oakland Sunshine Ordinance Section 2.20.100; Benicia Sunshine Ordinance Section 4.08.120(B).)</p>
<p>(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:</p>	<p>This form is suggested by the Brown Act except that Milpitas's ordinance does not permit labor negotiations of unrepresented employees to be discussed in closed session. (Government Code Section 54954.5(f).) <b>San Jose routinely uses the format set out in the Brown Act.</b></p>

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<p><b>CONFERENCE WITH NEGOTIATOR-COLLECTIVE BARGAINING</b></p> <p><b>Name and title of City's negotiator:</b></p> <p><b>Organization(s) representing:</b>  <input type="checkbox"/> [Applicable Police Officer Association(s)]  <input type="checkbox"/> [Applicable Fire Firefighter Association(s)]  <input type="checkbox"/> [Applicable Collective Bargaining Units]  <input type="checkbox"/> Other (specify)</p> <p><b>Anticipated issue(s) under negotiation _____ Wages</b>  <input type="checkbox"/> Hours  <input type="checkbox"/> Benefits  <input type="checkbox"/> Working Conditions  <input type="checkbox"/> Other (specify if known)  <input type="checkbox"/> All</p> <p><b>Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding.</b></p>	<p>San Francisco's ordinance is virtually the same as Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8.)</p> <p>Oakland and Benicia make the permissive provisions of Gov't Code Section 54954.5 mandatory. (Oakland Sunshine Ordinance Section 2.20.100; Benicia Sunshine Ordinance Section 4.08.120(B).)</p>
<p><b>In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately</b></p>	<p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8.)</p>

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prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.	
<b>3.2 Additional Requirements for Closed Sessions</b> (Content from Milpitas Government Ordinance, Section 2, I-310-2.70.)	
(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least ten (10) years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: two (2) years after the meeting if no litigation is filed; Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded. "Anticipated Litigation" considering personnel issues will be exempt from these disclosure requirements.	<p>The Brown Act provides that a legislative body may appoint a person to record minutes of closed session. The minutes need not be recorded and the Brown Act does not set out a timeline for retention. The minutes need not be disclosed and in fact are exempt from disclosure under the Public Records Act. (Government Code Section 54957.2(e).) <b>San Jose records minutes of closed session. The minutes have been disclosed in isolated instances when the Council elects to disclose them.</b></p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8-1(a).)</p> <p><b>Benicia requires tape recording of closed session rather than minutes. The tape recordings shall remain confidential unless the body elects to disclose the information.</b> (Benicia Sunshine Ordinance Section 4.08.140(C).)</p> <p>Oakland does not require any recording of closed session.</p>
(b) Each agenda item for a policy body covered by this ordinance that involves existing litigation shall identify the court, case number, and date the case was filed on the	San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.8-1(b).)

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written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.	This provision could be contrary to Section I-310-2.60(a)(3) which permits certain information about existing litigation to be omitted if “the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties. . . , or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage.”
<b>3.3 Closed Sessions: Permitted Topics</b> (Content from Milpitas Government Ordinance, Section 2, I-310-2.90.)	
A policy body may, but is not required to, hold closed sessions on items within the subject matter jurisdiction of the policy body:	San Francisco's ordinance is substantially similar to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.10.)
(a) With the chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.	<p>The Brown Act also permits closed session on matters posing a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service. (Government Code Section 54957(a).)</p> <p>San Francisco's ordinance is substantially similar to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.10(a).)</p> <p>Oakland and Benicia provide that Government Code Section 54957 applies to the conduct of closed session. (Oakland Sunshine Ordinance Section 2.20.120(D); Benicia Sunshine Ordinance Section 4.08.140(B).)</p>
(b) To consider the appointment, employment, evaluation of performance, discipline or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee	<p>The Brown Act also permits closed session to discuss employee discipline short of dismissal. (Government Code Section 54957(b)(1).) The Brown Act also permits witnesses – rather than just the complainant(s) -- to be excluded from both public meetings and closed session. (Government Code Section 54957(b)(1).)</p> <p>San Francisco's ordinance is substantially similar to Milpitas's ordinance but also includes the</p>

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complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter.	following definition: The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary. (San Francisco Sunshine Ordinance Section 67.10(b).)
	San Francisco's ordinance also includes the following subsection:  Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance. (San Francisco Sunshine Ordinance Section 67.10(c).)
(c) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:	The Brown Act includes a similar provision, but Milpitas's ordinance is more restrictive, requiring motion and vote in open session to assert the attorney-client privilege and requiring the standard that discussion in open session would "likely and unavoidably" prejudice the position of the City. (Government Code Section 54956.9.)  San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.10(d).)  Oakland and Benicia provide that Government Code Section 54956.9 applies to the conduct of closed session. (Oakland Sunshine Ordinance Section 2.20.120(D); Benicia Sunshine Ordinance Section 4.08.140(B).)  Contra Costa's ordinance is consistent with the Brown Act. (Contra Costa County Better Government Ordinance Section 25-2.402.)
(1) An adjudicatory proceeding before a court,	The Brown Act includes a similar provision, but Milpitas's ordinance does not include eminent

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administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,	<p>domain proceedings in its definition of adjudicatory proceeding. (Government Code Section 54956.9.)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance Section 67.10(d)(1).)</p> <p>Oakland and Benicia provide that Government Code Section 54956.9 applies to the conduct of closed session. (Oakland Sunshine Ordinance Section 2.20.120(D); Benicia Sunshine Ordinance Section 4.08.140(B).)</p> <p>Contra Costa’s ordinance is consistent with the Brown Act but also specifically permits closed session when an officer, employee or agency of the County is a party to an adjudicatory proceeding. (Contra Costa County Better Government Ordinance Section 25-2.402(b)(1).)</p>
(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.	<p>The Brown Act includes similar provisions. (Government Code Sections 54956.9(b) and (c).)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance Section 67.10(d)(2).)</p> <p>Oakland and Benicia provide that Government Code Section 54956.9 applies to the conduct of closed session. (Oakland Sunshine Ordinance Section 2.20.120(D); Benicia Sunshine Ordinance Section 4.08.140(B).)</p> <p>Contra Costa’s ordinance is consistent with the Brown Act but also includes the provision: “Legal advice as to the potential risk of litigation of actions not yet taken, if provided by counsel at a meeting of a policy body, is to be conveyed openly as a matter of public record.” (Contra Costa County Better Government Ordinance Section 25-2.402(b) and (c).)</p>
(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation	<p>There is no similar provision in the Brown Act.</p> <p>The San Francisco and Contra Costa ordinances are identical to Milpitas’s ordinance. (San</p>

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services or otherwise.	Francisco Sunshine Ordinance Section 67.10(d)(3); Contra Costa County Better Government Ordinance Section 25-2.402(d.)
(d) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters. The salary and benefits of members of the City Council, the City Manager and City Council appointees, and the unrepresented employees will be discussed and acted upon separately by the City Council in open session.	<p>The Brown Act includes similar provisions except that Milpitas's ordinance does not permit labor negotiations of unrepresented employees to be discussed in closed session. (Government Code Section 54957.6(a).)</p> <p>San Francisco's ordinance is identical to Milpitas's ordinance except it does not include the second sentence. (San Francisco Sunshine Ordinance Section 67.10(e).)</p> <p>Oakland and Benicia provide that Government Code Section 54957.6 applies to the conduct of closed session. (Oakland Sunshine Ordinance Section 2.20.120(D); Benicia Sunshine Ordinance Section 4.08.140(B).)</p> <p>Contra Costa's ordinance is similar to the Brown Act. (Contra Costa County Better Government Ordinance Section 25-2.404.)</p>
(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees or to discuss arbitration strategy with police or fire organizations. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly financially interested in the outcome of the negotiations.	<p>The Brown Act includes similar provisions except that Milpitas's ordinance requires that closed session take place “solely” prior to and during “active” consultations and discussions. And the last sentence is not included in the Brown Act. (Government Code Section 54957.6(a).) Moreover, although Milpitas's ordinance does not permit labor negotiations of unrepresented employees to be discussed in closed session, the term “unrepresented employees” is included in this section – perhaps as a typo.</p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance Section 67.10(e)(1).)</p> <p>Contra Costa's ordinance is consistent with the Brown Act, except that Contra Costa requires that closed session take place “only” prior to and during consultations and discussions and that “[t]he salary and benefits of members of the Board of Supervisors, the County Administrator and department heads will be discussed and acted upon separately by the Board of Supervisors in open</p>

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	<p>session.” (Contra Costa County Better Government Ordinance Section 25-2.404(a) and (c).)</p> <p>The Oakland and Contra Costa ordinances also provide that “[w]ith respect to any closed session discussion pertaining to employee salaries and benefits, a local body shall not discuss compensation or other contractual matters with one or more employees having a direct interest in the outcome of the negotiations.” (Oakland Sunshine Ordinance Section 2.20.120(C).)</p>
<p>(2) In addition to the closed sessions authorized by subsection I-310-2.90(d)(1), a policy body the City Council subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.</p>	<p>The San Francisco and Contra Costa ordinances are substantially similar to Milpitas’s ordinance. (San Francisco Sunshine Ordinance Section 67.10(e)(2); Contra Costa County Better Government Ordinance Section 25-2.404(b).)</p>
	<p>Oakland’s ordinance also requires that “[a]fter any initial closed session to consider the sale, lease, gift, purchase, or exchange of any property to which the City, Redevelopment Agency, or Port of Oakland has or will have an ownership or possessory interest, such local bodies shall notice for open session a discussion of the advisability of taking such an action before a final action is taken in the matter. This requirement shall not apply if the local body adopts a finding that holding an open session discussion would prejudice the local body in the proposed proceeding or transaction.” (Oakland Sunshine Ordinance Section 2.20120(B).)</p>
<p><b>3.4 Statement of Reasons for Closed Sessions</b>          (Content from Milpitas Government Ordinance, Section 2, I-310-2.100.)</p>	
<p>Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered</p>	<p>The Brown Act requires a disclosure of items to be discussed. (Government Code Section 54957.7.) Milpitas’s ordinance requires a statement of reasons including specific statutory or other legal authority under which the session is being held. Milpitas’s ordinance also requires that the statement be made in the form of the agenda disclosures and specifications as required by the ordinance.</p> <p>San Francisco’s ordinance is substantially similar to Milpitas’s ordinance. (San Francisco Sunshine</p>

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<p>in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section I-310-2.60 of this chapter. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section I-310-2.60 of this chapter, as part of the notice provided for the meeting.</p> <p>In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section I-310-2.60 of this chapter. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.</p>	<p>Ordinance Section 67.11.)</p> <p>Oakland and Benicia require a local body to announce in open session the general reason(s) for the closed session with citation and explanation to statutory or case authority. (Oakland Sunshine Ordinance Section 2.20.110; Benicia Sunshine Ordinance Section 4.08.130(A).) Oakland’s ordinance also requires that the statement be made in the form of the agenda disclosures and specifications as required by the ordinance. And Oakland permits public comment on any item before closed session convenes. (Oakland Sunshine Ordinance Section 2.20.110.)</p> <p>Similar to the Milpitas ordinance, when a closed session item is added to the agenda under emergency provisions, Benicia also requires that the statement of reasons for closed session be made in open session along with the findings required to add an item under the emergency provisions. (Benicia Sunshine Ordinance Section 4.08.130(B).) Benicia also requires that the body re-state the reason for closed session if the closed session item or session has been adjourned or continued from a prior meeting. (Benicia Sunshine Ordinance Section 4.08.130(C).)</p>
<p><b>3.5 Disclosure of Closed Session Discussion and Actions</b> (Content from Milpitas Government Ordinance, Section 2, I-310-2.110.)</p>	
<p>(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, any other law, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, which he or she</p>	<p>The Brown Act requires the legislative body to reconvene into open session and make disclosures required by the Brown Act. (Government Code Sections 54957.7(b) and 54957.1.) Milpitas’s ordinance includes the discretionary disclosure provision, as well as the procedure to move and vote on disclosure of “information the majority deems to be in the public interest.”</p> <p>The San Francisco and Contra Costa ordinances are substantially similar to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.12; Contra Costa County Better Government Ordinance Section 25-2.406(a).)</p> <p>Oakland and Benicia include the procedure to move and vote on disclosure of “any other information</p>

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designates to convey the information.	which a majority deems to be in the public interest.” (Oakland Sunshine Ordinance Section 2.20.130(A); Benicia Sunshine Ordinance Section 4.08.150(B).)
(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:	<p>The Brown Act is similar to Milpitas’s ordinance. (Government Code Section 54957.1(a).)</p> <p>The San Francisco and Contra Costa ordinances are identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11; Contra Costa County Better Government Ordinance Section 25-2.406(b).)</p> <p>The Oakland and Benicia ordinances are similar to Milpitas’s ordinance. (Oakland Sunshine Ordinance Section 2.20.130(B); Benicia Sunshine Ordinance Section 4.08.150(C).)</p>
(1) Real Property Negotiations: Approval given to a policy body’s negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body’s vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If, notwithstanding the final approval, there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the	<p>The Brown Act is similar except that the last sentence is unique to Milpitas’s ordinance. (Government Code Sections 54957.1(a)(1) (A) and (B).)</p> <p>Contra Costa’s ordinance is similar to the Brown Act. (Contra Costa County Better Government Ordinance Section 25-2.406(b)(1).)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>The Oakland and Benicia ordinances are similar to Milpitas’s ordinance. (Oakland Sunshine Ordinance Section 2.20.130(B)(1); Benicia Sunshine Ordinance Section 4.08.150(C)(1).)</p>

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agreement has been reached with respect to all the properties, or both.	
(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend, or seek, or refrain from seeking appellate review or relief or to otherwise enter as a party, intervener or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.	<p>The Brown Act is similar but Milpitas's ordinance requires that (1) co-parties with the City be disclosed; and (2) in litigation initiated by the City, the case shall be reported on in open session as soon after as an adverse party has been served, rather than simply allowing the City to disclose such information upon inquiry. (Government Code Sections 54957.1(a)(2).)</p> <p><b>San Jose follows the Brown Act.</b></p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>The Oakland, Benicia and Contra Costa ordinances are similar to Milpitas's ordinance. (Oakland Sunshine Ordinance Section 2.20.130(B)(2); Benicia Sunshine Ordinance Section 4.08.150(C)(2); Contra Costa County Better Government Ordinance Section 25-2.406(b)(2).)</p>
(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than <del>\$50,000</del> <u>\$1,000,000</u> . The agenda for any meeting in which a settlement subject to this	<p>There is no similar provision in the Brown Act. Moreover, Milpitas's ordinance does not include the provisions concerning settlement of litigation in Section 54957.1(a)(3) of the Brown Act.</p> <p>San Francisco's ordinance is identical to Milpitas's ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>The Oakland and Benicia ordinances include the provisions concerning settlement of litigation in Section 54957.1(a)(3) of the Brown Act as well as the first and last sentences of Milpitas's ordinance. (Oakland Sunshine Ordinance Section 2.20.130(B)(3); Benicia Sunshine Ordinance Section 4.08.150(C)(3).)</p> <p>Contra Costa's ordinance includes the provisions concerning settlement of litigation in Section 54957.1(a)(3) of the Brown Act as well as a different version of the first sentence of Milpitas's ordinance: "The county shall neither solicit nor agree to any term in a final settlement which</p>

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<p>section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city's interests in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.</p>	<p>would preclude the release of the text and terms of the settlement itself and any related documentation communicated to or received from the adverse party or parties, or any other materials not originally constituting a confidential communication between the county and its counsel. The county shall oppose any request for confidentiality to which it is proposed the County would be a party.” (Contra Costa County Better Government Ordinance Section 25-2.406(b)(3).)</p>
	<p>Contra Costa’s ordinance also includes:          “Claim Payments: Disposition reached as to claims discussed in closed session pursuant to Government Code section 54956.95 shall be reported as soon as agreed upon by the claimant, in a manner that discloses the name of the claimant, the substance of the claim, and any monetary amount approved for payment.” (Contra Costa County Better Government Ordinance Section 25-2.406(b)(4).)</p>
<p>(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.</p>	<p>The Brown Act is similar except that Milpitas’s ordinance (1) requires more information than just the title of the position; and (2) does not allow deferral on reporting until the employee has exhausted all of his or her administrative remedies. (Government Code Section 54957.1(a)(5).)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>Contra Costa’s ordinance is substantially similar to Milpitas’s ordinance but allows deferral on reporting until the employee has exhausted all of his or her administrative remedies. (Contra Costa County Better Government Ordinance Section 25-2.406(b)(5).)</p>

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<p>(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least <del>15-10</del> calendar days before the meeting of the policy body to which the agreement is to be reported.</p>	<p>The Brown Act requires only that the agreement be reported after it is final and accepted and ratified by the other party. (Government Code Section 54957.1(a)(6).)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>Contra Costa’s ordinance is similar to the Brown Act but also requires that “[s]uch disclosures . . . include all formal offers and counter-offers made over the term of the negotiations.” (Contra Costa County Better Government Ordinance Section 25-2.406(b)(6).)</p>
<p>(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed <del>except for documents otherwise protected by state or federal law. Supporting documents immediately shall must</del> be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.</p>	<p>There appears to be a typo in this section since the sentence runs on. In any event, the Brown Act appears to be similar but permits documentation supporting the report to be made available within 24 hours rather than immediately. (Government Code Section 54957.1(b).)</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>The Oakland, Benicia and Contra Costa ordinances are similar to the Brown Act. (Oakland Sunshine Ordinance Section 2.20.130(C); Benicia Sunshine Ordinance Section 4.08.150(D); Contra Costa County Better Government Ordinance Section 25-2.406(c).)</p>
<p>(d) A written summary of the information required to be immediately reported pursuant to this section, <del>or documents embodying that information,</del> shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.</p>	<p>There is no provision for a written summary in the Brown Act.</p> <p>San Francisco’s ordinance is identical to Milpitas’s ordinance. (San Francisco Sunshine Ordinance, Section 67.11.)</p> <p>Oakland’s ordinance requires a written summary or documents containing the information by the next business day but only requires that notice of the summary be posted rather than the entire</p>

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	<p>summary. (Oakland Sunshine Ordinance Section 2.20.130(D).)</p> <p>Benicia’s ordinance requires a written summary or documents containing the information be made available by the next business day. (Benicia Sunshine Ordinance Section 4.08.150(E).)</p>
	<p>Oakland and Benicia also require that action taken in closed session which is not immediately disclosable shall be disclosed and noticed via the written summary procedures. (Oakland Sunshine Ordinance Section 2.20.130(E); Benicia Sunshine Ordinance Section 4.08.150(F).)</p>